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Community Shares of Wisconsin

TO: Assembly Committee on Children and Family Law
FROM: Mike Murray, Policy Specialist, Wisconsin Coalition Against Sexual Assault, Inc.
Date: January 24, 2008
RE: WCASA Testimony in Favor of AB 651- The Child Victims Act

My name is Mike Murray and I am the Policy Specialist for the Wisconsin Coalition Against Sexual Assault, Inc. (WCASA). We are a statewide member organization representing nearly 200 individual, affiliate and organizational members dedicated to ending sexual violence in Wisconsin. I am submitting this written testimony in favor of AB 651, which would repeal the civil statute of limitations for sexual assault of a child and revive cases that were barred by the previous civil statue of limitations for three years. WCASA and its members are very grateful to Representative Suder and Senator Lassa for championing this important victims' rights legislation.

Why Victims Need This Bill

Whether we realize it or not, everyone knows at least one person who has been sexually assaulted. However, unless we have lived through the trauma ourselves, we may not understand why someone may wait 20 years, 30 years, or even longer before reporting abuse. Victims choose to keep quiet for many different reasons:

They are told not to tell. Children are sometimes told that no one will believe them, they will get in trouble, or that another family member will be harmed. These young victims are convinced to keep secrets.

They do not know help is available. Children raised in the 50's and 60's were not taught about reporting inappropriate touching as they are now. In fact, those generations buried their feelings and fears in order to survive the shame they experienced. Even today many children do not receive information about where to go for help. While many children are told to talk to a teacher, parent, school nurse or police officer, there are still areas of the state where sexual assault service providers are struggling to get information about sexual assault prevention and where to go for help after a sexual assault into school curriculum.

They are afraid that no one will believe them. This is what many abusers tell children in order to keep them from reporting. If they do tell someone and that person does not believe them, is unable to deal with the disclosure, or does not protect the child from further abuse, the child may simply give up.

They are embarrassed to come forward. Adult survivors of childhood sexual assault may not want to risk turning their lives upside down by reporting a childhood assault. It can take several decades for a person to reach the point where they feel psychologically and emotionally able to report these crimes. By then, the statute of limitations may have passed and the doors of justice are closed.

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Prevalence and Cost of Child Sexual Abuse

The numbers regarding childhood sexual assault are staggering. In 2004 alone, there were 4322 cases of childhood sexual assault reported to law enforcement in Wisconsin.[1] This alarmingly high number is sadly a gross underestimate of the scope of child sexual abuse that is actually occurring in our state; more than 60 percent of sexual assaults are never even reported to law enforcement.[2]

The costs of child sexual abuse are enormous for victims, their loved ones, and for society in general. A 2005 Minnesota study estimated that each incident of child sexual assault costs victims and society $184,000.[3] The vast majority of this cost is associated with quality of life losses for victims that result from adverse affects on the victim's mental health, increased risk of sexually transmitted infections (STI's), increased suicide rates, and wide variety of other risk factors associated with sexual assault. Victims should have every opportunity to place these costs back where they belong—in the pockets of those who sexually abused them.

Conclusion

Victims of childhood sexual assault deserve their day in court. Victims who have not taken legal action because of fear or shame should not be further penalized be a statute of limitations—nor should perpetrators be let off the hook for their behavior.

Do we want to continue giving sexual abusers the opportunity to just "lay low" for a given number of years and then be "home free?" WCASA, and its members, think that victims should have a chance at achieving justice and closure. AB 651 will help give many victims this chance that they so rightly deserve.

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[1] See *Sexual Assaults in Wisconsin 2004, Revised*. Wisconsin Office of Justice Assistance at http://oja.state.wi.us/docview.asp?docid=11165&locid=97

[2] 2005 National Crime Victimization Survey (NCVS). U.S. Department of Justice, Bureau of Statistics. December 2006.

[3] See *Costs of Sexual Violence in Minnesota*. Minnesota Department of Public Health (July 2007) at http://www.health.state.mn.us/injury/pub/MN_brochure21FINALtoWeb.pdf

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Testimony in Opposition to Assembly Bill 651
Statute of Limitations for Sexual Contact with a Child
Assembly Committee on Children and Family Law
By Julaine K. Appling, CEO
January 24, 2008

Thank you, Chairman Owens and committee members, for the opportunity to testify on Assembly Bill 651. My name is Julaine Appling, and I am testifying today as president of Wisconsin Family Action, the legislative action arm of Wisconsin Family Council.

Any abuse of a child by an adult is horrific. Sexual abuse is particularly heinous because it violates every aspect of a precious child. Persons who commit such abuse should be prosecuted and punished to the full extent of the law. Beyond that, any institution, be it public or private, that knows about such abuse and fosters it or even simply ignores it hoping it will go away or is negligent in any way about knowing or recognizing warning signs or establishing safeguards or properly educating those working with children, should also be liable and prosecutable. No school, church, organization or business, whether a government agency or a private entity, should be able to hide such atrocities with impunity.

Additionally, it is vitally important that victims of such abuse find help and healing, as they work through the trauma and the damage they have experienced. While we must admit that sexual abuse of children, sadly has taken place in the confines of churches and other church-related ministries, including parochial schools, those situations are the exceptions, not the rule. Churches and religious ministries are generally the very places where victims of such abuse can find help and healing. Many will testify to that truth. Jeopardizing these institutions will ultimately work against the problem this legislation purports to fix.

However, as with virtually all other crimes, cases involving sexual abuse of a child must have a reasonable and prudent statute of limitations as a safeguard to all concerned. The bill we are considering today bears all the earmarks of being what I refer to as a "knee-jerk" proposal. While I cannot prove this, I suspect one, if not both, of the primary authors found out about a particular case in which a person alleges he or she was abused by a trusted leader, perhaps, even a member of the clergy, but could not file a civil lawsuit because he or she was over the age of 35, which means the statute of limitations in this instance had expired. It has been my experience time and again that when legislators try to legislate for a specific incident, assuming it is typical, we get bad legislation—legislation that is far too broad, is over-reaching, and in general has disastrous intended or unintended consequences. I heard Senator Lazich recently on Wisconsin Public Radio talking about another bill and she rightly said that as a legislator she legislates for the masses, not for individuals and not for specific instances. I believe SB 356 falls directly in this category.

Whether intentional or not, this bill could significantly affect churches, private and parochial schools, ministries, day cares, and organizations such as the Boy Scouts and Girl Scouts. SB 356 proposes to completely remove the statue of limitations for civil lawsuits involving childhood sexual abuse cases and opens a three-year window of opportunity for cases to be filed in situations where the statutes of limitations have already expired.

Wisconsin Family Action is opposed to this proposal for several reasons.

1) Removing the statutes of limitations sets a precedence. In Wisconsin, murder and first degree sexual assault of a minor are the only crimes that have no statute of limitations. Lawsuits for all other crimes must be engaged within prescribed time limits—and for good reason. Appropriate statutes of limitation ensure that prosecution and civil litigation proceed in a timely fashion, while evidence and witnesses are available and fresh. If the statutes of limitation were lifted in civil cases involving child sexual assault, as heinous as it is, what will be next in line to follow suit? More importantly, allowing lawsuits involving situations that happened 30 or 40, or even more years ago absolutely invites tainted evidence, often relying on the very suspect "repressed memory" counseling technique **(see attached document).**

2) The bill targets the entity with which the perpetrator was associated, not the perpetrator. For purposes of the legislation, a "person" against whom damages are sought is extremely broadly defined to include an "individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity." While the authors insist that this bill is not targeting any particular group, that it is the perpetrator they are seeking to punish, the unique, breathtakingly broad definition of *person* belies this. It appears that the target, while perhaps not one particular group or church, is certainly not the perpetrator but the organization with which he/she was associated.

Proponents have mentioned how hard it is to try old cases. They've decried the lack of good evidence and the lack of witnesses and described how difficult it would be to find an attorney who would take such a case. Supporters are trying to convince us that few lawsuits would be brought. If that is the case, then why are they even considering such an open-ended law? The truth is we have no idea how many lawsuits might be brought if the statutes of limitation were removed and a three-year window of opportunity was opened for situations where the statutes have already run. If the scope of the bill were limited to an individual, rather than an all-encompassing definition of *person*, this argument might have some credibility. However, such is not the case.

3) All institutions named in the bills will not be treated equally. On the face of it, because public and private entities are mentioned in the definition of "person," one could assume they would be treated the same. However, public and private entities will be treated significantly differently. Current law caps the liability of municipal bodies, such as school districts, at $50,000 per person. The liability of private or not-for-profit entities, such as Christian schools or private day care centers, is not capped. Additionally, the law limits the amount of punitive damages against government entities, while no such limit or exemption exists for private entities, including churches.

This means a single law suit filed against a Christian school or a church, some 40 or more years after the fact, could result in the church or school paying millions in liability and damages, while a public school, for instance, would be liable for significantly less. Obviously, this inequity means different amounts being awarded to victims—and sets up a scenario where private entities become more likely targets for such lawsuits than government entities.

This legislation essentially holds churches and ministries hostage indefinitely, sometimes for situations long past that those currently involved in the ministry know absolutely nothing about. A single large damage award could completely devastate a church, private school, day care, ministry or service organization such as the Boy Scouts. Those presently involved with these organizations should not be subject to and burdened by the liability for the actions of others long since gone from the organization or perhaps even deceased.

4) The current statute of limitations is generous and a "window" is likely unconstitutional. A couple of years ago, this legislature decided to increase the statutes of limitation from three years after a victim of child abuse turns 18 to when the victim is 35 years of age. This change put Wisconsin among the short list of states with very generous statutes of limitations in cases involving child sexual assault. Additionally, in 2004, former Wisconsin Attorney General Peg Lautenschlager issued an opinion in which she told legislators that opening a window of opportunity for cases in which the statutes of limitation had expired was likely unconstitutional.

Since nothing has changed regarding this issue, it is reasonable to assume that advice is as good now as it was then.

In summary, this bill goes entirely too far and will do far more harm than good in the long run. If the statistics proponents have used are accurate, and if 20% of Wisconsin children have been sexually abused, then we have a problem far beyond the scope of this proposal. If proponents are truly interested in deterring child sexual abuse, then I would propose that they introduce legislation that cracks down on pornography—and specifically the child pornography that pedophiles use—and protect young girls from early sexual activity instead of teaching them how to engage in it. This I know—suspending the statute of limitations and leaving unsuspecting churches, schools, and other civic groups vulnerable ad infinitum to crippling liability and punitive damages will not take care of the problem. Rather, such actions will most assuredly create more and greater problems.

I urge you to vote against Assembly Bill 651.

Thank you.

Madame Chair. Committee Members

Good Morning,

My name is Tom O'Connell and I reside with my family in Cross Plains, WI.

On February 5, 2002, I received a phone call from my sister-in-law that my brother Dan O'Connell, along with an intern that worked for our family business in Hudson, WI., James Ellison, were both murdered—shot in the Dan's office. While there was initially shock and then sorrow in both families, the person or persons who committed these crimes were unknown. The times that followed were terrible. Not only did we grieve the loss of two great men, we had to endure rumors that began to surface that Dan or James were involved in crimes, that a cult committed the murders, or that someone was out to hurt the entire O'Connell family. Not only were we grieving but we were told that all family members were suspects. Our distrust of everyone who was associated with Dan grew daily. Today, close to six years after the murders, there is not a single day that goes be don't that his wife, two children, parents, siblings and friends mourn a death that could have been prevented.

Two years after the murders, police began questioning the local parish priest, the same parish that Dan was an active member and the priest who con-celebrated Dan's funeral. Dan found out that the priest had molested a child and approached him. In doing so, he lost his life attempting to protect children from

sexual abuse and James was simply at the wrong place at the wrong time. As it became more and more evident that the priest was responsible, he committed suicide on a Sunday morning adjacent to his church. A John Doe investigation was held on the two murders that brought out the molestation charges and the two murders. On a scale of 1-10, with ten being the highest probability that the crimes were committed, the judge ruled a 10 that the priest brutally murdered both Dan and James. During the investigation, it became very clear that the priest had a troubled past since age of 5 including his grade school, high school and seminary years, and was also involved in bizarre behavior with molestation accusations throughout. What made it even worse was his superiors in both the seminary and the diocese knew of this behavior and yet did little to prevent further problems. If only someone in a leadership role would have acted responsibly and aggressively, two murders, a suicide, and who knows how many molestations all would have prevented. Yet they did not and today, these leaders have yet to be held accountable. In our case and thousands more, we have seen a lack of openness, honesty, and transparency as it relates to church hierarchy. — Church Has Review Boards —

This horrific event led the O'Connells to discover how bad child molestation has become in our state and in our country. The death of Dan has become a stepping stone for our family in trying to make something good come from two murders and a suicide. We conducted extensive research into child

molestation and found that this is not something that has been sensationalized by the media but a true harsh reality. We made a pledge that we as a family would fight for children and protect them from that sexual molestation and abuse.

Through our research and the many meetings and events we have attended, we have heard from hundreds of victims of molestation at the hands of family, friends, clergy, coaches, teachers, other trusted individuals or complete strangers. The stories of these victims are as gut wrenching as anything you can imagine. I have been told by countless victims that the long term results of the abuse they encountered have resulted in decades of pain, including psychological, physical, and spiritual pain. One recent phone call I received was from a woman who stated that she is in her 50s and has just come to terms with the fact that she and her sister were molested as children by someone the family knew and trusted; the local parish priest. The woman went on to say she has attempted suicide twice and has suffered severe depression her entire adult life. She just recently found out through therapy why she has been suffering as she had blocked out the abuse for all these years. She went on to say her sister suffered from depression as well but is now in a better place as she was successful in committing suicide by jumping in front of a train. We have heard from victims across the country that have had years of depression, suicide attempts, divorce, addictions to drugs and alcohol, and the inability to carry on in society due to abuse that has happened years ago.

Let me remind you too that victims that carry this burden during their adult lives, not only have a difficult time with families and jobs, but most often cannot afford or are not eligible for health plans or insurance that will offer needed medical help.

I perceive child molestation as the worst crime that someone can commit with the possible exception of murder. No other crime will carry the long term effects of molestation. Taking a child who is innocent, who usually has trust in his or her abuser, and is too small or naïve to fight back, makes the perpetrator someone as low as possible. I ask you to all take off your legislators hat and put on your Mom, Dad, Grandpa, Grandma, brother or sister hat and think about someone in your family who is that innocent and then is brutally abused by someone much larger, older, and who uses their so called maturity or position to entice the child. Now think about that child and what the rest of their life will be like. More often than not, you will not even hear about the abuse as the perpetrator has threatened the child. This threat causes the child to hide the abuse in the back of their minds and may not come out for decades.

We learned that child abuse in Wisconsin is disgraceful. According to Children's Trust Fund, 40,473 children were reported abused and neglected in 2003. If it is not the child's welfare that motivates decisions you are to make, let me mention the costs to the state. Cost analysis released in 2005 by the Children's Trust Fund, determined that the price of child

abuse in Wisconsin is $ 673 million per year or $ 1.8 million per day.

We also learned through our efforts and disheartened to discover that Wisconsin is one of the worst states when it comes to child molestation laws. The civil Statute of Limitations law allows molesters to continue with their lives and too often, not be held responsible for the problems that impact adults who have been molested as a child. Victims of abuse have experiences so traumatic that often times their memory is repressed for dozens of years—even decades as I mentioned before. By the time many of these victims come to terms with the abuse or have what is called "delayed discovery", their abusers can no longer be held accountable.

In addition to having some of the worst Statue of Limitation laws in the country for individuals, Wisconsin does not allow the organizations, associations, or companies that the criminal worked for be accountable. Too often, these associations are responsible for hiding, transferring or not reporting abusers to the authorities. Yet, when the abuser moves to another city or is transferred and molests yet another child or children, the organization is not held responsible when indeed they could have and should have prevented this from happening again. Why in Wisconsin do we think that any organization is above the law? Yet in this state, that is exactly what we are doing. This

results in more abuse, more children's lives and that of their families being destroyed, and those guilty getting a free pass.

So I will again ask you to put take off your legislator's hat and put yourself in the role of a family member or friend. Ask yourself at what time period do you release the person who has done such harm to your son or daughter? And how do we thank the organization that could have prevented the abuse to your child but didn't and now quite possibly, dozens of more parents are in the same situation.

I strongly encourage you to consider changing the Statue of Limitation laws for civil suits in Wisconsin to send the message to those individuals or organizations that Wisconsin will protect their children and support victims. Today, you are in a position to make a real change for the safety of children today and those not yet born. As I mentioned, our family has taken on protecting children to make something good come from a terrible event. We also want to make sure that if tomorrow, next week, next year or in five years, we pick up a paper and see where another child has been sexually molested that we know we did everything in our power to prevent this. I only hope that you can all claim the same.

Thank you.

Submitted by Mr. Tom O'Connell

MSNBC.com

Sex misconduct plaguing schools

Survey finds 2,500 incidents over 5 years, across all types of districts

The Associated Press
updated 3:50 p.m. CT, Sat., Oct. 20, 2007

The young teacher hung his head, avoiding eye contact. Yes, he had touched a fifth-grader's breast during recess. "I guess it was just lust of the flesh," he told his boss.

That got Gary C. Lindsey fired from his first teaching job in Oelwein, Iowa. But it didn't end his career. He taught for decades in Illinois and Iowa, fending off at least a half-dozen more abuse accusations.

When he finally surrendered his teaching license in 2004—40 years after that first little girl came forward—it wasn't a principal or a state agency that ended his career. It was one persistent victim and her parents.

Lindsey's case is just a small example of a widespread problem in American schools: sexual misconduct by the very teachers who are supposed to be nurturing the nation's children.

Students in America's schools are groped. They're raped. They're pursued, seduced and think they're in love.

An Associated Press investigation found more than 2,500 cases over five years in which educators were punished for actions from bizarre to sadistic.

There are 3 million public school teachers nationwide, most devoted to their work. Yet the number of abusive educators—nearly three for every school day—speaks to a much larger problem in a system that is stacked against victims.

Most of the abuse never gets reported. Those cases reported often end with no action. Cases investigated sometimes can't be proven, and many abusers have several victims.

And no one—not the schools, not the courts, not the state or federal governments—has found a surefire way to keep molesting teachers out of classrooms.

Those are the findings of an AP investigation in which reporters sought disciplinary records in all 50 states and the District of Columbia. The result is an unprecedented national look at the scope of sex offenses by educators—the very definition of breach of trust.

The seven-month investigation found 2,570 educators whose teaching credentials were revoked, denied, surrendered or sanctioned from 2001 through 2005 following allegations of sexual misconduct.

'It doesn't matter if it's urban or rural or suburban'

Young people were the victims in at least 1,801 of the cases, and more than 80 percent of those were students. At least half the educators who were punished by their states also were convicted of crimes related to their misconduct.

The findings draw obvious comparisons to sex abuse scandals in other institutions, among them the Roman Catholic Church. A review by America's Catholic bishops found that about 4,400 of 110,000 priests were accused of molesting minors from 1950 through 2002.

Clergy abuse is part of the national consciousness after a string of highly publicized cases. But until now, there's been little sense of the extent of educator abuse.

Beyond the horror of individual crimes, the larger shame is that the institutions that govern education have only sporadically addressed a problem that's been apparent for years.

"From my own experience—this could get me in trouble—I think every single school district in the nation has at least one perpetrator. At least one," says Mary Jo McGrath, a California lawyer who has spent 30 years investigating abuse and misconduct in schools. "It doesn't matter if it's urban or rural or suburban."

One report mandated by Congress estimated that as many as 4.5 million students, out of roughly 50 million in American schools, are subject to sexual misconduct by an employee of a school sometime between kindergarten and 12th grade. That figure includes verbal harassment that's sexual in nature.

'Some people don't want their past opened'

Jennah Bramow, one of Lindsey's accusers in Cedar Rapids, Iowa, wonders why there isn't more outrage.

"You're supposed to be able to send your kids to school knowing that they're going to be safe," says Bramow, now 20. While other victims accepted settlement deals and signed confidentiality agreements, she sued her city's schools for failing to protect her and others from Lindsey—and won. Only then was Lindsey's teaching license finally revoked.

As an 8-year-old elementary-school student, Bramow told how Lindsey forced her hand on what she called his "pee-pee."

"How did you know it was his pee-pee?" an interviewer at St. Luke's Child Protection Center in Cedar Rapids asked Jennah in a videotape, taken in 1995.

"'Cause I felt something?" said Jennah, then a fidgety girl with long, dark hair.

"How did it feel?" the investigator asked.

"Bumpy," Jennah replied. She drew a picture that showed how Lindsey made her touch him on the zipper area of his pants.

Lindsey, now 68, refused multiple requests for an interview. "It never occurs to you people that some people don't want their past opened back up," he said when an AP reporter approached him at his home outside Cedar Rapids and asked questions.

That past, according to evidence presented in the Bramow's civil case, included accusations from students and parents along with reprimands from principals that were filed away, explained away and ultimately ignored until 1995, when accusations from Bramow and two other girls forced his early retirement. Even then, he kept his teaching license until the Bramows took the case public and filed a complaint with the state.

Like Lindsey, the perpetrators that the AP found are everyday educators—teachers, school psychologists, principals and superintendents among them. They're often popular and recognized for excellence and, in nearly nine out of 10 cases, they're male. While some abused students in school, others were cited for sexual misconduct after hours that didn't necessarily involve a kid from their classes, such as viewing or distributing child pornography.

They include:

- Joseph E. Hayes, a former principal in East St. Louis, Ill. DNA evidence in a civil case determined that he impregnated a 14-year-old student. Never charged criminally, his license was suspended in 2003. He has ignored an order to surrender it permanently.
- Donald M. Landrum, a high school teacher in Polk County, N.C. His bosses warned him not to meet with female students behind closed doors. They put a glass window in his office door, but Landrum papered over it. Police later found pornography and condoms in his office and alleged that he was about to have sex with a female student. His license was revoked in 2005.
- Rebecca A. Boicelli, a former teacher in Redwood City, Calif. She conceived a child with a 16-year-old former student then went on maternity leave in 2004 while police investigated. She was hired to teach in a nearby school district; board members said police hadn't told them about the investigation.

The overwhelming majority of cases the AP examined involved teachers in public schools. Private school teachers rarely turn up because many are not required to have a teaching license and, even when they have one, disciplinary actions are typically handled within the school.

Two of the nation's major teachers unions, the American Federation of Teachers and the National Education Association, each denounced sex abuse while emphasizing that educators' rights also must be taken into account.

"Students must be protected from sexual predators and abuse, and teachers must be protected from false accusations," said NEA President Reg Weaver, who refused to be interviewed and instead released a two-paragraph statement.

Kathy Buzad of the AFT said that "if there's one incident of sexual misconduct between a teacher and a student that's one too many."

'Some deviant who crawled into the school district'

The United States has grown more sympathetic to victims of sex abuse over recent decades, particularly when it comes to young people. Laws that protect children from abusers bear the names of young victims. Police have made pursuing Internet predators a priority. People convicted of abuse typically face tough sentences and registry as sex offenders.

Even so, sexually abusive teachers continue to take advantage, and there are several reasons why.

For one, many Americans deny the problem, and even treat the abuse with misplaced fascination. Popular media reports trumpet relationships between attractive female teachers and male students.

"It's dealt with in a salacious manner with late-night comedians saying 'What 14-year-old boy wouldn't want to have sex with his teacher?' It trivializes the whole issue," says Robert Shoop, a professor of educational administration at Kansas State University who has written a book aimed at helping school districts identify and deal with sexual misconduct.

"In other cases, it's reported as if this is some deviant who crawled into the school district—'and now that they're gone, everything's OK.' But it's much more prevalent than people would think."

The AP investigation found efforts to stop individual offenders but, overall, a deeply entrenched resistance toward recognizing and fighting abuse. It starts in school hallways, where fellow teachers look away or feel powerless to help. School administrators make behind-the-scenes deals to avoid lawsuits and other trouble. And in state capitals and Congress, lawmakers shy from tough state punishments or any cohesive national policy for fear of disparaging a vital profession.

That only enables rogue teachers, and puts kids who aren't likely to be believed in a tough spot.

In case after case the AP examined, accusations of inappropriate behavior were dismissed. One girl in Mansfield, Ohio, complained about a sexual assault by teacher Donald Coots and got expelled. It was only when a second girl, years later, brought a similar complaint against the same teacher that he was punished.

And that second girl also was ostracized by the school community and ultimately left town.

Unless there's a videotape of a teacher involved with a child, everyone wants to believe the authority figure, says Wayne Promisel, a retired Virginia detective who has investigated many sex abuse cases.

He and others who track the problem reiterated one point repeatedly during the AP investigation: Very few abusers get caught.

They point to several academic studies estimating that only about one in 10 victimized children report sexual abuse of any kind to someone who can do something about it.

Teachers, administrators and even parents frequently don't, or won't, recognize the signs that a crime is taking place.

"They can't see what's in front of their face. Not unlike a kid in an alcoholic family, who'll say 'My family is great,'" says McGrath, the California lawyer and investigator who now trains entire school systems how to recognize what she calls the unmistakable "red flags" of misconduct.

'Involved in several hundred investigations'

In Hamburg, Pa., in 2002, those "red flags" should have been clear. A student skipped classes every day to spend time with one teacher. He gave her gifts and rides in his car. She sat on his lap. The bond ran so deep that the student got chastised repeatedly—even suspended once for being late and absent so often. But there were no questions for the teacher.

Heather Kline was 12, a girl with a broad smile and blond hair pulled back tight. Teacher Troy Mansfield had cultivated her since she was in his third-grade class.

"Kids, like, idolized me because they thought I was, like, cool because he paid more attention to me," says Kline, now 18, sitting at her mother's kitchen table, sorting through a file of old poems and cards from Mansfield. "I was just like really comfortable. I could tell him anything."

He never pushed her, just raised the stakes, bit by bit—a comment about how good she looked, a gift, a hug.

She was sure she was in love.

By winter of seventh grade, he was sneaking her off in his car for an hour of sex, dropping in on her weekly baby-sitting duties, e-mailing about what clothes she should wear, about his sexual fantasies, about marriage and children.

Mansfield finally got caught by the girl's mother, and his own words convicted him. At his criminal trial in 2004, Heather read his e-mails and instant messages aloud, from declarations of true love to explicit references to past sex. He's serving up to 31 years in state prison.

The growing use of e-mails and text messages is leaving a trail that investigators and prosecutors can use to prove an intimate relationship when other evidence is hard to find.

Even then, many in the community find it difficult to accept that a predator is in their midst. When these cases break, defendants often portray the students as seducers or false accusers. However, every investigator questioned said that is largely a misconception.

"I've been involved in several hundred investigations," says Martin Bates, an assistant superintendent in a Salt Lake City school district. "I think I've seen that just a couple of times ... where a teacher is being pursued by a student."

'Passing the trash'

Too often, problem teachers are allowed to leave quietly. That can mean future abuse for another student and another school district.

"They might deal with it internally, suspending the person or having the person move on. So their license is never investigated," says Charol Shakeshaft, a leading expert in teacher sex abuse who heads the educational leadership department at Virginia Commonwealth University.

It's a dynamic so common it has its own nicknames—"passing the trash" or the "mobile molester."

Laws in several states require that even an allegation of sexual misconduct be reported to the state departments that oversee teacher licenses. But there's no consistent enforcement, so such laws are easy to ignore.

School officials fear public embarrassment as much as the perpetrators do, Shakeshaft says. They want to avoid the fallout from going up against a popular teacher. They also don't want to get sued by teachers or victims, and they don't want to face a challenge from a strong union.

In the Iowa case, Lindsey agreed to leave without fighting when his bosses kept the reason for his departure confidential. The decades' worth of allegations against him would have stayed secret, if not for Bramow.

Across the country, such deals and lack of information-sharing allow abusive teachers to jump state lines, even when one school does put a stop to the abuse.

While some schools and states have been aggressive about investigating problem teachers and publicizing it when they're found, others were hesitant to share details of cases with the AP—Alabama and Mississippi among the more resistant. Maine, the only state that gave the AP no disciplinary information, has a law that keeps offending teachers' cases secret.

Meanwhile, the reasons given for punishing hundreds of educators, including many in California, were so vague there was no way to tell why they'd been punished, until further investigation by AP reporters revealed it was sexual misconduct.

And in Hawaii, no educators were disciplined by the state in the five years the AP examined, even though some teachers there were serving sentences for various sex crimes during that time. They technically remained teachers, even behind bars.

Elsewhere, there have been fitful steps toward catching errant teachers that may be having some effect. The AP found the number of state actions against sexually abusive teachers rose steadily, to a high of 649 in 2005.

More states now require background checks on teachers, fingerprinting and mandatory reporting of abuse, though there are still loopholes and a lack of coordination among districts and states.

'They never go away'

U.S. Supreme Court rulings in the last 20 years on civil rights and sex discrimination have opened schools up to potentially huge financial punishments for abuses, which has driven some schools to act.

And the National Association of State Directors of Teacher Education and Certification keeps a list of educators who've been punished for any reason, but only shares the names among state agencies.

The uncoordinated system that's developed means some teachers still fall through the cracks. Aaron M. Brevik is a case in point.

Brevik was a teacher at an elementary school in Warren, Mich., until he was accused of using a camera hidden in a gym bag to secretly film boys in locker rooms and showers. He also faced charges that he recorded himself molesting a boy while the child slept.

Found guilty of criminal sexual conduct, Brevik is now serving a five- to 20-year prison sentence and lost his Michigan license in 2005.

What Michigan officials apparently didn't know when they hired him was that Brevik's teaching license in Minnesota had been permanently suspended in 2001 after he allegedly invited two male minors to stay with him in a hotel room. He was principal of an elementary school in southeastern Minnesota at the time.

"I tell you what, they never go away. They just blend a little better," says Steve Janosko, a prosecutor in Ocean County, N.J., who handled the case of a former high school teacher and football coach, Nicholas J. Arminio.

Arminio surrendered his New Jersey teaching license in 1994 after two female students separately accused him of inappropriate touching. The state of Maryland didn't know that when he applied for teaching credentials

and took a job at a high school in Baltimore County. He eventually resigned and lost that license, too.

Even so, until this month, he was coaching football at another Baltimore County high school in a job that does not require a teaching license. After the AP started asking questions, he was fired.

Victims also face consequences when teachers are punished.

'I wanted to believe him'

In Pennsylvania, after news of teacher Troy Mansfield's arrest hit, girls called Kline, his 12-year-old victim, a "slut" to her face. A teacher called her a "vixen." Friends stopped talking to her. Kids no longer sat with her at lunch.

Her abuser, meanwhile, had been a popular teacher and football coach.

So, between rumors that she was pregnant or doing drugs and her own panic attacks and depression, Kline bounced between schools. At 16, she ran away to Nashville.

"I didn't have my childhood," says Kline, who's back home now, working at a grocery cash register and hoping to get her GED so she can go to nursing school. "He had me so matured at so young.

"I remember going from little baby dolls to just being an adult."

The courts dealt her a final insult. A federal judge dismissed her civil suit against the school, saying administrators had no obligation to protect her from a predatory teacher since officials were unaware of the abuse, despite what the court called widespread "unsubstantiated rumors" in the school. The family is appealing.

In Iowa, the state Supreme Court made the opposite ruling in the Bramow case, deciding she and her parents could sue the Cedar Rapids schools for failing to stop Lindsey.

Bramow, now a young mother who waits tables for a living, won a $20,000 judgment. But Lindsey was never criminally charged due to what the former county prosecutor deemed insufficient evidence.

Arthur Sensor, the former superintendent in Oelwein, Iowa, who vividly recalls pressuring Lindsey to quit on Feb. 18, 1964, regrets that he didn't do more to stop him back then.

Now, he says, he'd call the police.

"He promised me he wouldn't do it again—that he had learned. And he was a young man, a beginning teacher, had a young wife, a young child," Sensor, now 86 years old, said during testimony at the Bramows' civil trial.

"I wanted to believe him, and I did."

URL: http://www.msnbc.msn.com/id/21392345/

Wisconsin Coalition for Civil Justice

TO: Members, Assembly Committee on Children and Family Law

FROM: Wisconsin Coalition for Civil Justice
Robert Fassbender
James Friedman, Legal Counsel

DATE: January 24, 2008

RE: Assembly Bill 651

The Wisconsin Coalition for Civil Justice (WCCJ) provides the following analysis of AB 651 ***for information purposes only.*** WCCJ recognizes and appreciates the sincere motives of the authors to respond to a perceived wrong and appreciates the plight of the alleged "victims" who are targeted to be aided by this legislation.

The purpose of the following memorandum is to address the proposal from a purely legal/constitutional standpoint.

We thank you for allowing us to present this information for your consideration.

I. Summary

Assembly Bill 651 would provide a three-year reviver window for plaintiffs to file childhood sexual abuse claims, regardless of the previous expiration of the statute of limitations. The bill also would eliminate the applicable statute of limitations prospectively.

For over 100 years, the Wisconsin Supreme Court has consistently rejected reviver statutes as unconstitutional. The Wisconsin Supreme Court subscribes to the view that the expiration of a statute of limitations vests a property right in a defendant. The resurrection of a time-barred claim therefore amounts to a taking of property without due process of law. As such, AB 651 would likely fail a constitutional challenge in Wisconsin.

II. Proposed Wisconsin Reviver Statute

Currently, child sexual abuse claims in Wisconsin must be brought before the plaintiff reaches age 35. (Wis. Stat. § 893.587.) Senate Bill 356 would amend Wis. Stat. § 893.587 to eliminate this statute of limitations: "An action to recover damages against any person for injury caused by an adult's sexual contact with anyone under the age of 18 or by an act committed by an adult that would create a cause of action under § 895.442 [Action for sexual exploitation by a member of the clergy] may be commenced at any

time." The bill also would add the following reviver: "A cause of action described under sub. (1) that was barred by a statute of limitations or a time limit in effect before the effective date of this subsection . . . is revived and that action may be commenced within 3 years after the effective date of this subsection."

III. The Proposed Wisconsin Reviver Statute Is Likely Unconstitutional In Wisconsin

In a line of cases stretching back more than 100 years, the Wisconsin Supreme Court has held that reviver statutes are unconstitutional. See, e.g., Haase v. Sawicki, 20 Wis.2d 308, 310-13 (1963) (collecting cases, and holding reviver statute unconstitutional).

The basis for these holdings is that under Wisconsin law, the running of a statute of limitations destroys the plaintiff's remedy *and* the right to the claim (creating a right for the defendant to assert the statute of limitations as a bar). Wenke v. Gehl Co., 274 Wis.2d 220, 258 at fn. 31 (2004) (collecting cases). Once a statute of limitations runs in Wisconsin, a defendant has a vested property right to assert that statute of limitations as an absolute defense to the claim against him. Maryland Casualty Co. v. Beleznay, 245 Wis. 390, 393 (1944) ("In Wisconsin the running of the statute of limitations absolutely extinguishes the cause of action for in Wisconsin limitations are not treated as statutes of repose."); Eingartner v. Illinois Steel Co., 103 Wis. 373 (1899) ("The bar created by the statute of limitations is as effectual as payment or any other defense, and when once vested cannot be taken away even by the legislature.").

Under Wisconsin law, any legislative action reviving a time-bared claim would appear to take away a defendant's vested property right and, thereby, constitute an unconstitutional taking without due process of law. Laffitte v. City of Superior, 142 Wis. 73 (1910) ("The limitation of actions is a right as well as a remedy, extinguishing the right on one side and creating a right on the other, which is as of high dignity as regards judicial remedies as any other right and it is a right which enjoys constitutional protection."). Under Wisconsin law, such a taking may, therefore, be a violation of Section 1, Article I of the Wisconsin Constitution as well as the Fourteenth Amendment of the Constitution of the United States. Haase, 20 Wis.2d at 311; Aicher v. Wisconsin Patients Compensation Fund, 237 Wis.2d 99, 116 (2000) ("Defendants have a constitutional right to rely upon statutes of limitations to limit the claim against them."); Westphal v. E.I. du Pont de Nemours & Co., Inc., 192 Wis.2d 347, 373 (Wis. App. 1995) (same); cf. Betthauser v. Medical Protective Co., 172 Wis.2d 141, 150-51 (1992) (statute applied retroactively to shorten statute of limitations would potentially be unconstitutional because it would extinguish a vested property right in a cause of action); Hunter v. School District of Gale-Ettrick-Trempealeau, 97 Wis.2d 435, 446-47 (1980) (same).

The Bill is likely unconstitutional under Wisconsin law because it would take the vested property right in the expiration of the statute of limitations governing childhood sexual abuse claims by individuals age 35 or over.

Rep Kleefisch,

I had planned to testify before the Committee on Children & Family Law today concerning AB 651. Since I am not able to attend the public hearing, I want to share with you my testimony I would have given if able to attend the hearing.

I have been involved with and worked with churches and Christian Schools for the better part of the last 30 years here in Wisconsin. I can speak authoritatively when I say the Wisconsin Fellowship of Baptist Churches (WFBC) and the Wisconsin Association of Christian Schools (WACS) believe no one in their right mind would be supportive of, or favor sexually abusing children, or adults for that matter. I want to assure you, our concern and opposition to AB 651 in no way is to indicate we favor or want to cover up such actions. However, removing the statute of limitations for bringing action against such activity, we believe can and will have far reaching ramifications.

The only crime in Wisconsin, to my knowledge, that we have no statute of limitations for is murder. All other areas of law there are statutes of limitations which vary. These statute of limitations are there for a purpose and bring credibility and integrity to the law itself. When the current statutes were updated to allow anyone up to 35 years of age to bring such charges it was believed this was probably going too far, but it was accepted as reasonable by many and is current law. Removing all statute of limitations in AB 651 for the bringing of such charges seems very extreme and unreasonable. It seems reasonable that individuals should know or realize by age 35 if they were sexually assaulted, or subject to incest as a child, or subject to sexual contact by a member of the clergy as a child, and bring charges for the same, if they so desire. Removing this statute of limitations could result in an unprecedented number of charges for such crimes even if not legitimate. It becomes difficult to establish all the facts for charges that could be brought 35 or more years after an individual claims to have been subjected to such crimes as a child. An individual, church, or school could be totally innocent of the charges, but could be bankrupted and have their reputation and ministry completely destroyed in the process of proving their innocence. It is also quite possible that an individual charged with such activity is no longer part of that ministry or may be deceased. In such case, the organization could have no knowledge or way of knowing anything about such charges. Current law was passed in 2004 and we are not sure of why the need to change it again.

I was very involved when legislation was passed to make members of the clergy reporters of child abuse and neglect (SB 207 in 2004). Much research and thought was given to the issue of the statute of limitations which was part of that bill. The issue of an open window for a time period after the effective date of that bill was also looked at very carefully. After careful study and consideration, the bill established the age of 35 as the limitation to bring charges and the issue of an open window of one year was eliminated. Peggy Lautenschlager, the attorney general at that time, was asked to review a provision of the proposal that would permit any person who was injured as a result of sexual contact by a member of the clergy at any time in the past to bring suit under the cause of action created within the bill. After her review of the bill draft and a related April 30, 2003, memorandum prepared by the Wisconsin Legislative Council, she responded in general agreement with the analysis and conclusion of the memorandum. Referring to the memorandum, she wrote;

"As it indicates, the Wisconsin Supreme Court has been reluctant to permit the legislature to revive a cause of action whose statute of limitation has previously run. Wisconsin courts have generally viewed our statute of limitations to exhaust both the underlying rights and remedies in such cases. Given the skepticism with which Wisconsin courts have approached retroactive statutes and the primacy of our statute of limitations, I would not expect the related provisions of this bill draft to survive constitutional challenge. "

She went on to write, "You have also asked that I consider the legal effect of creating a new cause of action that would apply to past abuse. While the framework for considering such a proposal may differ from an attempt to simply revive a cause of action that has expired, I would not expect the substantive determination of a Wisconsin court to be altered. As you describe, a new civil cause of action that would be applied retroactively is also likely to be constitutionally

flawed." This information was taken into consideration and the bill drafted and passed accordingly. This same reasoning seems applicable and should be applied to AB 651.

Since this legislation is about civil charges rather than criminal charges, that translates into financial settlements. This bill if passed does not put an individual in prison or place them on a sexual offender list. The bill brings about financial settlements for the injured party. The bill defines "person" as an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity. It is obvious that charges against an individual also means charges against their place of employment as well. There is a great disparity between public entities and private entities in this area. It is my understanding that public entities such as a public school are capped at $50,000 for such charges. However, private Christian Schools and other non-profit entities are not capped. While this may not be the intent, this legislation would treat churches, private religious schools, and other private non-profit organizations differently than government and public entities. This seems to make churches, private religious schools, and other non-profit organizations at greater risk for such action. While, we would concur that such private non-profit organizations should be held accountable for actions as represented in this bill, we are also concerned that a frivolous suite could potentially put such an organization out of business as well as ruin their testimony and ministry, even if innocent of all charges. Most churches and schools have taken definite and immediate steps to do all they can to prevent any such actions from taking place in their ministries. The church I am a member of will not allow anyone of any age to work with young people under the age of 18 unless they have had training and signed that they have gone through the training. My wife works a regular rotation in the nursery at our church and is not allowed to be in the nursery by herself even if the only child in the nursery is our own Grandson. While child abuse may not totally be prevented, this is our good faith attempt to prevent such from occurring. There also does not appear to be any tort liability as part of this bill to help prevent frivolous charges or award payment of costs involved when an entity is charged in a frivolous suite and is forced to spend large amounts of money to prove their innocence. If legislation such as this bill puts this liability on private entities, the same should be true of public entities.

I am asking you to carefully consider these concerns, and in light of them, keep the current statute of limitation in place and not bring AB 651 forward for further consideration. Thank you for the privilege of sharing this information with you today. I would be happy to further discuss this issue with you at your convenience.

Sincerely,

Marvin L Munyon

Founder & President WI Capitol Watch

W D A A
Tim Baxter, President
220 North Beaumont Road
Crawford County Courthouse
Prairie du Chien, WI 53821

January 9, 2008

Rep. Scott Suder
Room 21 North, State Capitol
P.O. Box 8953
Madison, WI 53708

Sen. Julie Lasa
Room 109 South, State Capitol
P.O. Box 7882
Madison, WI 53708-7882

RE: Wisconsin Child Victims Act – AB 651

Dear Rep. Suder and Sen. Lasa:

Thank you for taking leadership roles in promoting Wisconsin's Child Victims Act – AB 651 (and companion bill, SB 356). We wish to inform you that the Executive Board of the Wisconsin District Attorneys Association supports this important legislation.

Justice and public safety require victims of childhood sexual abuse have meaningful opportunities to seek just compensation from those who would abuse our most vulnerable citizens. Again, thank you for your leadership on this issue.

Sincerely,

Tim Baxter
President

cc: DA John Chisolm
John Wodelli
Bill Berndt

Wisconsin District Attorneys Association
P.O. Box 1702 Madison, WI 53701 (608) 513-1161

Submitted by Dori Schmidt
Doris Schmidt

1/24/08

To the Assembly Children & Family Law Committee
AB 651

I was here last week to appear before the Senate hearing on this same bill. This week my husband will speak to you about what happened to our son and I did not want to repeat what he says so I thought that maybe I could mention some points that came to my mind last week, while others were speaking.

First of all, regarding the churches, schools and preschools that were represented I would like to commend them for the programs they have undertaken to help prevent sexual abuse in their establishments. Prevention is the most important step we can take to overcome this great problem

in our society. My question is, if these organizations are not responsible for hiding, covering up or otherwise enabling the action of abusers, are they liable for the actions of those abusers? It seems to me that the cover-ups and pay-offs are what made them liable and the reason why the victims sought large sums of money in their civil suits. Would people "come out of the woodwork claiming sexual abuse that really did not happen? We were assured last week by the professionals that spoke that this would not be tolerated. So why are they so afraid of this "3-year window"? Shouldn't we all be afraid to commit another cover-up or hiding of the facts. The victims should be able to come forward at anytime to protect themselves. It is not an issue of the victims not being willing to come forward

earlier, but an issue of them not being able to. It often takes a long time for the victim to come to terms with what happened, and often they are threatened that if they tell someone, something terrible will happen to themselves or others. For this reason there should not be a statute of limitations but a victim should be able to come forward at anytime they are able to face what happened to them.

My second issue is that it was mentioned that the only crime that does not have a statute of limitations is murder, and that as bad as sexual abuse is it is not the same as murder. I would like to go on record, as the mother of a victim, to say that a victim of sexual abuse suffers the loss or death of their confidence, innocence, sexuality, self-

esteem, and oftentimes their life. My son is dead as a direct result of the abuse. Many sexual abuse victims commit suicide because they simply cannot live with what was done to them.

What happened in the Catholic Church involved a different kind of victim and I believe because the abuse was not dealt with properly these people felt they had the right to sue for compensation. Please understand that I am not undermining their abuse in any way, I am only saying it was different than someone being abused by a family member or close family friend. I know that in our son's case he was not interested in money. What he wanted to accomplish was to have the public informed about what his abuser was and just the fact that people knew about him

might be a deterrent from him hurting anymore children. At the time that our son finally felt he could tell his family what had happened he was not able to bring criminal charges against his abuser because at that time the statute of limitations was 31, and I believe that the statute of limitations for civil suit was 25. Our son was 33. His abuser was an upstanding businessman in the community and even won an award for his work with children prior to his being arrested for a totally separate occurrence of abuse.

Our son just wanted him stopped. He wanted to be empowered by facing his abuser in court.

Thank you for letting me speak before you today and I ask that you vote yes on Assembly Bill 651 and help our children to be protected from the sexual abusers that are out there. If you read the newspapers you know that the numbers are staggering and someone has to protect the children. The sexual abusers do not deserve any protection.

WISCONSIN ASSEMBLY
COMMITTEE ON CHILDREN AND FAMILY LAW

January 24, 2008

Statement of Attorney James G. Birnbaum

RE: Assembly Bill 651

My name is James G. Birnbaum. I am a lifelong resident and taxpayer of the State of Wisconsin. I have been engaged in the private practice of law for the last 33 years, currently practicing in the law firm of Birnbaum, Seymour, Kirchner & Birnbaum, LLP, in La Crosse, Wisconsin.

I am here to testify in opposition to the proposed legislation.

I am analyzing this legislation from three perspectives.

First, in my 33 years of practicing law, I have and continue to advocate for and represent numerous victims of sexual abuse. One of them was a cousin who lived in Minnesota and was, as a child, repeatedly sexually abused by her father. At his funeral, she told me of the abuse and asked if I would help her. I told her I was not licensed in Minnesota, but I would try to help. I searched, unsuccessfully, for a Minnesota attorney to take her case. I ended up litigating the case myself all the way to the Minnesota Supreme Court where I was successful in arguing for a change in Minnesota law as it relates to claims against estates by incest survivors. *See V.H. vs. Estate of Bernard F. Birnbaum*, 543 N.W.2d 649 (Minn. 1996). Therefore, for me, the plight and pain of victims is well known, both professionally and personally.

Second, for 33 years I have and continue to represent public employees accused of sexual misconduct, many falsely accused. This includes cases before the Wisconsin Supreme Court and at the federal, state, local and particularly school district levels. *See Fortney vs. School District of West Salem*, 108 Wis.2d 167, 321 N.W.2d 225 (1982)

Third, for 33 years I have represented private not-for-profit agencies, generally and on issues including allegations of sexual misconduct by its agents. For the last 25 years, I have been the Diocesan Attorney for the Catholic Diocese of La Crosse which includes 19 counties in Western Wisconsin, 165 parishes, 52 elementary schools and 7 school systems. In this capacity, I also have reviewed allegations of sexual misconduct, again many unmeritorious claims.

Therefore, I am familiar, both factually and legally, with the issues this legislation addresses.

As with most legislation, this legislation addresses both rights and responsibilities. While on its face it appears to be neutrally applied, its effect is the opposite. This legislation is intended to benefit victims of child sexual abuse. However, while its intent is noble, it fails to practically assist perhaps the largest groups of victims (those of incest). Because of collateral legal rules, it continues to bar claims by a significantly large number of similarly situated victims in the public sector and therefore unfairly targets the private not-for-profit institutions with catastrophic effects.

I do not intend to repeat the legal, practical and general public policy problems that retroactively abolishing statutes of limitations creates. However, I do support the testimony that describes the legal and practical problems that abolishing the statute of limitations retroactively, inherently creates. I join with others who, after careful review of Wisconsin Law, believe that this legislation is unconstitutional.

VICTIMS OF INCEST

This legislation fails to meaningfully address perhaps the most significant, in terms of numbers, victims of child sexual abuse, those victims who have been sexually abused by relatives. While this legislation appears to neutrally apply across the board to all victims, the practical difficulties of suits against family members continue. First, let's be honest, the bottom line of this legislation is all about the deep pocket - its all about the money.

As a practical matter, suits against victims of incest are not common. The internal psychological complexity of suing family members and all the pressure that poses, plus the reality that even with a live perpetrator, the likelihood of recovery is remote. The effect of window legislation on victims and perpetrators of incest would be negligible. Even within the current statute of limitations, in the majority of these cases, the perpetrator has no assets. Likewise, suing dead perpetrators is even more fruitless.

Therefore, the cruel reality is that the individuals who ought to pay, the actual perpetrators, are the least likely to be sued.

Moreover, with the look-back period, unless a relative is wealthy and has a sizeable estate, suing dead people will not occur.

PUBLIC SECTOR VICTIMS AND INSTITUTIONS

Because of the practical and legal realities of suing the actual perpetrators is generally fruitless, this legislation is all about suing institutions whose pockets are generally deeper and who continue to exist long after the life span of any individual perpetrator. Again, while on its face this legislation purports to treat public and private institutions the same, both with regard to the victims and with regard to the institutions, the reality is that the opposite is true.

In 1998, I was involved in a case of a public school bus driver who was accused of sexually abusing 18 four-and-five-year-old little girls on his school bus in a public school district. Despite the fact that there was evidence suggesting that the school district was made aware prior to these instances of similar accusations against this bus driver, in subsequent civil actions on behalf of some of the four-and-five-year-old little girls and their families, they never got beyond the Motion for Summary Judgment because of the Doctrine of Sovereign Immunity. See *Raquel ex el vs. Necedah Area School District*, 259 Wis.2d 933, 657 N.W.2d 439 (Ct.App.2002) and *Manning vs. Necedah Area Schools*, 2007 WI App. 230 740 N.W.2d 901 (Ct.App.2007). (Unpublished)

The Doctrine of Sovereign Immunity is far more than merely limiting damages, where allowed, to $50,000[1] and precluding entirely the award of punitive damages[2] The Doctrine of Sovereign Immunity is an absolute bar to any claims such as would be brought against a public entity for its negligent supervision or treatment of its agents accused of child sexual abuse.[3] These cases never get to the damage caps of $50,000 and no punitive damages. They are dismissed on the over-broad general liability defenses of sovereign immunity. This is in addition to the Notice of Claims procedural hurdles contained in the statutes.[4]

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[1] "Except as provided in this subsection, the amount recoverable by any person for any damages, injuries or death in any action founded on tort against any volunteer fire company organized under ch. 181 or 213, political corporation, governmental subdivision or agency thereof and against their officers, officials, agents or employees for acts done in their official capacity or in the course of their agency or employment, whether proceeded against jointly or severally, shall not exceed $50,000. The amount recoverable under this subsection shall not exceed $25,000 in any such action against a volunteer fire company organized under ch. 181 or 213 or its officers, officials, agents or employees. If a volunteer fire company organized under ch. 181 or 213 is part of a combined fire department, the $25,000 limit still applies to actions against the volunteer fire company or its officers, officials, agents or employees. No punitive damages may be allowed or recoverable in any such action under this subsection." Sec. 893.80(8), Wis. Stats.

[2] *Id.*

[3] "No suit may be brought against any volunteer fire company organized under ch. 213, political corporation, governmental subdivision or any agency thereof for the intentional torts of its officers, officials, agents or employees nor may any suit be brought against such corporation, subdivision or agency or volunteer fire company or against its officers, officials, agents or employees for acts done in the exercise of legislative, quasi-legislative, judicial or quasi-judicial functions." Sec. 893.80(4), Wis. Stats.

[4] "Within 120 days after the happening of the event giving rise to the claim, written notice of the circumstances of the claim signed by the party, agent or attorney is served on the volunteer fire company, political corporation, governmental subdivision or agency and on the officer, official, agent or employee under s. 801.11. Failure to give the requisite notice shall not bar action on the claim if the fire company, corporation, subdivision or agency had actual notice of the claim and the claimant shows to the satisfaction of the court that the delay or failure to give the requisite notice has not been prejudicial to the defendant fire company, corporation, subdivision or agency or to the defendant officer, official, agent or employee; and... A claim containing the address of the claimant and an itemized statement of the relief sought is presented to the appropriate clerk or person who performs the duties of a clerk or secretary for the defendant fire company, corporation, subdivision or agency and the claim is disallowed...[and] Notice of disallowance of the claim submitted under sub. (1) shall be served on the claimant by registered or certified mail and the receipt therefor, signed by the claimant, or the returned registered letter, shall be proof of service. Failure of the appropriate body to disallow a claim within 120 days after presentation of the written notice

Therefore, this legislation would in effect create two classes of both victims and institutions. If you are sexually abused by a public agent, you have no recourse and the public entity has no obligation. The same actions by an agent of a private entity could be subject to suit without limitation and victims compensated.

I am certain that the Legislature does not intend to single out, with no rational basis, both victims and institutions, treating them differently. Therefore, if the Legislature is serious about the statute of limitations, then it must necessarily also abolish the Doctrine of Sovereign Immunity, remove the compensatory damage limits in the statute, eliminate the preclusion of punitive damages and remove the procedural impediments which do not exist in private litigation.

If this Legislature was not inclined to take that drastic step, current court developments may do it for you. A week ago Friday, the Wisconsin Supreme Court has accepted for review the *Manning v. Necedah Area Schools* case which will address, at least in part, Sovereign Immunity as it relates to child sexual abuse claims in the public school setting. Whether this Legislature or the courts take that step, it, without exaggeration, will constitute one of the largest unfunded mandates to local units of government in Wisconsin history. Add this unprecedented legislation to it and you have all the makings for a complete local unit of government meltdown.

What are the policy considerations that the legislature should consider by such a proposal? Would it be unfair to the school districts, cities, counties and the State to be faced with old claims involving alleged perpetrators who have long since left and/or are deceased? For example, a seasonal lifeguard in 1950, who is paid $50 a week and who had sexual contact with a 15-year-old swimmer on a municipal beach could expose a municipality to a million dollar lawsuit, is just one hypothetical example.

Would public entities be faced with lawsuits involving the alleged negligence of administrators who have long since left and/or are deceased?

Should the taxpayers of 2008 be subject to the potential of paying millions of dollars for the conduct of agents which they all abhor or for actions of administrators over which they have no control or knowledge of their conduct?

How could they possibly budget for those possibilities?

How could they make claims against insurance carriers that perhaps did not even exist at the time these allegations occurred?

How could they continue to provide essential services with these unforseen financial demands?

These are all legitimate questions and the natural consequences if the legislature was inclined to

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of the claim is a disallowance. No action on a claim under this section against any defendant fire company, corporation, subdivision or agency nor against any defendant officer, official, agent or employee, may be brought after 6 months from the date of service of the notice of disallowance, and the notice of disallowance shall contain a statement to that effect." Sec. 893.80(1)(a), (b), and (g), Wis. Stats.

adopt look-back legislation and have it uniformly applied in both the private and public sector.

PRIVATE NOT-FOR-PROFIT VICTIMS AND INSTITUTIONS

Therefore, while apparently neutral on its face, this legislation is all about singling out not-for-profit institutions who have and continue to provide extraordinary public service past, present and future. Because most of the private sector institutions are financially fragile and because the proposed legislation would permit lawsuits that go back an unlimited amount of time for which there was no opportunity to budget, seek insurance or for that matter, even investigate whether or not the allegations are true, could very well put these institutions out of business. In the case of education alone, this legislation could force the closure of private schools and the commensurate consequence that the children that they currently educate would be forced into the public school system.

Are the taxpayers of the State of Wisconsin and of local school districts prepared for that collateral consequence?

The same public policy questions posed for public entities can be posed here. As to who should pay, is there any material difference between an innocent taxpayer and an innocent benefactor?

In addition, if this legislation passes, fundamental fairness requires that it extend the same treatment to the third-party providers upon whose advice not-for-profit institutions relied. For many years there were circumstances in which offending persons were sent to well respected medical providers for assessment, treatment and advice about reassignment. Relying on that advice, agents were reassigned. If the not for profits will now be subject to suit on claims that have expired arising out of such reassignments, then the statute of limitations should likewise be lifted to permit third-party or direct actions against the medical, psychological and psychiatric community whose relied-upon advice was, in some cases, tragically wrong.

Finally, the question is not whether there have been instances of children who have been victimized by relatives, and by agents of both public and private institutions. There is no question that victimization of children is abhorrent and an abomination. The real question is who should pay?

As strongly as I feel for the plight and pain of victims of child sexual abuse and seeing the consequences that flow from that abuse, nonetheless, it would be a catastrophic public policy mistake to create disparate classes of both victims and institutions and bankrupt the institutions that provide essential services and education. That is not sound public policy.

Jim\Window Legislation 2008\window legislative testimony Assembly 1-24-2008

January 24, 2008

My name is Ken Schmidt, and I am here this morning to testify in support of AB-651, the "Child's Victim Act". My wife and I are the parents of a victim of child sexual abuse, a victim who died as a result of that abuse.

In August of 2000, our son John, who was living in Wyoming where he had gone to make a new life for himself (but we didn't really know why at the time), told his mother during a phone call that he had been sexually molested as a child by his trusted uncle... my oldest brother and business partner. He had kept this bottled up inside for 25 years. He said that at times he would tell himself that it really didn't happen... that it had only been a bad dream... but he knew all along that <u>that</u> wasn't true. Instead he buried it and just lived with it alone all those years. At that time he only told her about one incident when he was 12 years old, but as time went by, it came out that this child molestation started at 9 years of age and continued for 8 years.

Another brother of mine, who lives in Arkansas and was here visiting in August of 2000, told me at that time that his son had told him that the same oldest brother of ours had sexually molested him from age 6 years until he was 17 years old. I determined that our sons had each told their parents within two weeks of each other, neither knowing that the other had been molested nor that they had told their respective parents about their sexual abuse.

My wife and I really had a difficult time dealing with this, so we went to see a psychiatrist for counseling. We told him we had talked about confronting my oldest brother about this, and his immediate reaction was... "don't expect any satisfaction". He said the normal reaction of a perpetrator would be... #1.

there will be no remorse, #2. he will somehow try to put the blame on the victim, and, #3. he will try to make it criminally less serious by saying it happened when the victim was closer to adulthood.

This brother from Arkansas, his wife, my wife and I went to our oldest brother's home to confront him about this sexual molestation of our sons. Guess what? He sat there, just as smug as can be, and said (verbatim) "yeah, I did it... so what? It was a long time ago!" He proceeded to say our sons had each approached him, that they were each 17 years old and that it had happened only that one time. He also stated that our son and his cousin were the only two boys that he had ever touched. Just what the psychiatrist said would happen... to the letter!

John and his cousin wanted to get this pervert off the street so he couldn't hurt any other young boys. They couldn't do anything, though, because the statute of limitations prohibited it because they were both 33 years old. They were devastated!

Looking back now, we can see where John became a different person in so many ways as he grew up. He started hating school. His high school counselor told us that John doubted his manhood. We said you must be confusing him with someone else. John's too macho. But we now realize that he got in fights, rode horses, joined the Marine Corps, rode in the rodeo, rode Harleys, and started drinking heavily... all to prove to himself that he was a man. He couldn't sustain a lasting relationship with any female because he felt he was unworthy of anyone loving him... even us, his parents.

You see... John blamed himself and felt guilty about his being sexually molested. We've been told that this is very typical. He finally stopped the sexual abuse at age 17 when he told my

oldest brother, "if you touch me once more old man, I'll kill you." By that time he was quite muscular, and it stopped. But that just reinforced his feeling that he should have said that right away and it never would have continued. He was a little boy… only 9 years old, for heaven's sake! But that's how his mind interpreted it.

John loved the west, the freedom it gave him, the openness to ride his horse, the history of the area, and the mountains. He moved to Wyoming in 2000. He was 33. We often talked to him on the phone, although I'll admit it was mostly with his mom, but I was often on the extension. He often talked about the emotional and psychological pain he was experiencing from the memory of the molestation, and his mom told him that though we missed him, it was a good thing he was in Wyoming and able to be away from it. His response was, "Mom, I'm never away from it, it is with me every day of my life."

In early February of 2003, he was extremely depressed and told his mom that he was having flashback-type nightmares of the molestation. He'd wake up in a cold sweat, reliving those terrifying memories. He said "it was like paralyzing terror." It finally got the best of him and he could see no other way out. He put a gun to his head and ended his pain. He was 35. We've been told by the Child Abuse Prevention Fund and by others that suicide is not at all uncommon among child sexual abuse victims. <u>THIS STATISTIC SHOULD BE A WAKE-UP CALL TO ALL IN A POSITION OF AUTHORITY!</u>

After John died, we had people call us and tell us that my oldest brother had done it to them, or that he had molested their sons. We even got a call from someone out of state who said he was molested by this same perpetrator. So much I guess for the comment that John and my nephew were the only ones he ever molested. Of course we knew that, because the

psychiatrist mentioned earlier told us "once a pedophile, always a pedophile". In his case, it had gone on for 50 years.

Almost 5 years have passed and we think of John and miss him every day. You cannot know what it feels like unless you have lost a child. A part of you has been taken away and things will never be the same. I ask you to try to understand what we are feeling. We have to stop giving child molesters the freedom to continue their sick and perverted actions against children. Only then will our children be safe.

Please vote yes on AB-561. The fate of the "Child's Victim Act" is truly in your hands. It's up to you! Don't let our children down. Thank you.

Childhood memories haunt woman

Man admits abusing sister, but he can't be prosecuted

BY JUDY WIFF
Regional Editor

She was five or six the first time she remembers her brother sexually assaulting her.

She remembers the smell of oil and mildew in the machine shed "on top of the hill" at their home near Minocqua. She was wearing red plaid pants, a blue shirt with white buttons and navy blue deck shoes.

Her brother, who would have been 17 or 18, took her into the shed, closed the door and told her to remove her clothing. It hurt, but he told her it's "supposed to feel that way." His hands were cold.

He said, "Don't tell, Mom."

She didn't tell that time, nor the next, nor the next, nor the next, nor the next.

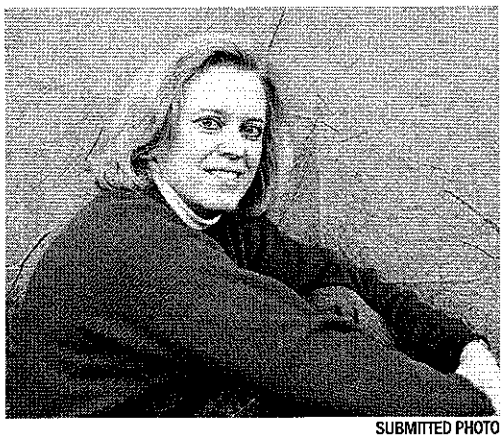
Last February Jim Brostowitz, of Hazelhurst, admitted on tape to molesting his little sister. When interviewed by Oneida County investigators, he admitted assaulting both her and another sister starting when the girls were about five.

In a written statement to police he admits "experimenting sexually" with his little sisters and assaulting Sue twice when she was 16 and he was 28.

He was held in the Oneida County Jail for two days and released when the district attorney informed investigators that, even though Brostowitz had confessed, he couldn't be prosecuted because the statute of limitations had passed. His wife picked him up at jail, and he went home.

That's not enough, says Sue Wilson. It's not enough for the damage he did to her. She is pinning her hopes on a new bill introduced in the Wisconsin Legislature that would extend the time for victims of childhood sexual assault to file civil lawsuits against their abusers.

While she told her fiancé, John Wilson, just before their marriage and her mother a short time later, Sue didn't report the abuse to authorities until 10 months ago. She is now 43. Her brother is 55.



SUBMITTED PHOTO

Sue Wilson, 43, didn't officially report childhood sexual abuse until early last year. She says she has struggled for years to put the abuse behind her, while her brother, who was an adult during most of the abuse, walks free.

'IN THE BACK OF YOUR MIND'

"I never thought about it at that time," said Wilson of her life in the decades after the abuse. "You just put it in the back of your mind and you forget about it."

Events — such as seeing a man with his daughter in the mall — and some odors occasionally triggered flashbacks. But for most the most part, Wilson put the abuse out of her mind.

She has no idea why, but suddenly in late 2006 she couldn't forget anymore.

Wilson, an avid outdoorswoman, began thinking of suicide. She thought of hanging herself from her tree stand. She considered ramming her Jeep into a clump of trees on the road near her house.

"I didn't have a direct plan, but I was conscious of what I was doing," said Wilson. She was fighting the urge to give up.

"Every night when I came in from hunting, I thought, 'I won.'"

"I didn't see it coming. I didn't recognize it," she says now. "It pretty much took me over."

Then one day she left her home, her family and her life.

She said the only thing she could think about was putting her whole life behind her and starting new.

"And I left — for a day," she said with a tight little laugh.

She drove and drove and drove.

"I was just running, wanting to leave it all behind," said Wilson. A friend called repeatedly on her cell phone, asking Wilson to calm down and come home. When she did, she and John, a River Falls police investigator, talked for hours.

"The next morning he asked me if my bags were packed," said Wilson. Her husband told her he was taking her to Mayo Clinic in Rochester, Minn. "He said he had made an appointment for me."

A DIAGNOSIS

As they checked in at the front desk, her husband slipped the nurse a note. Wilson isn't sure what it said, but she remembers the woman's reaction.

"She pipes up and says, 'You need to go through the emergency room,'" said Wilson.

Before she knew it, she found herself wearing a paper gown in an empty room.

"I was stuck in a room with nothing that I could use to hurt myself."

Then she was taken to the third floor, the psychiatric ward. She was there for five days.

"The doctors wouldn't leave until they got everything, step by step," said Wilson. "They wouldn't let me not talk about it." She talked to doctors, nurses and other patients in group therapy sessions.

"They explained what was happening," said Wilson. Doctors told her that her post traumatic stress disorder wasn't unusual for someone who had lived through the kind of abuse she had endured.

They told her people can live normally for years, then break. Talking with others who'd survived similar abuse also helped.

She came back home the week before Christmas, a time that had always been stressful for her.

"Christmas was the last time I remember Jim abusing me," she said.

In February she made an appointment to talk to an investigator in the Oneida County Sheriff's Department.

THE INVESTIGATION

Det. Sgt. Teresa Smoczyk interviewed her, and they arranged for Wilson to call her brother, first by one cell phone and later using another brother's cell phone, to tape Jim's statements.

Wilson has copies of those tapes. Since she hadn't talked to her brother for over a decade, Jim Brostowitz sounds a little surprised to hear from her.

She tells him she's having nightmares and flashbacks about the things he did to her and needs to talk about why he did it.

Though he says he doesn't remember some of the details the same way she does, Brostowitz admits to the abuse.

"I don't know if it was curiosity at the time or overactive hormones, but I know it wasn't right," he says.

As for the later incidents at his home where Sue had come to babysit, Brostowitz says he was young and his wife "wasn't real receptive to sex at the time."

He says he doesn't remember the details of one incident she remembers.

Wilson, prompted by the investigator, asks if he has ever had intercourse with his sisters.

"No," he replies, "That I would remember."

But while he doesn't remember some of the details Wilson remembers, he says he also molested another sister when she was also about five.

"(She) and I, we goofed around a little bit," he says.

He also tells Wilson he's sorry: "I can't apologize enough for putting you through this."

Following those taped conversations, Smoczyk and another investigator interviewed Brostowitz at the Minocqua, Hazelhurst, Lake Tomahawk Middle School where he worked in the maintenance department.

According to the investigators' report, Brostowitz was surprised they wanted to speak with him, "that this was stuff that happened when he was a kid between himself and his sister."

According to the report, he described the assaults in detail, even telling about an incident Wilson doesn't remember.

When an investigator asked if Brostowitz had ever had sex with his sister, the report says he said no because she was his sister and "You don't do that."

Also, according to the investigators' report, "(He) said that he hates pedophiles and he thinks they should be shot."

In a handwritten statement to investigators, Brostowitz admits molesting another sister when she was ages five to nine and Wilson at age five and when she was a teenager.

NO CHARGES

After Brostowitz signed his statement, he was arrested and taken to jail Feb. 12. He was released Feb. 14 after DA Patrick O'Melia called to say he had checked with the Wisconsin attorney general's office, but Brostowitz wouldn't be charged because the statute of limitations had passed.

Investigators at first believed they could prosecute Brostowitz on two counts of first-degree sexual assault, two counts of second-degree sexual assault and four counts of incest because Wilson reported the abuse before she turned 45. But because the events occurred before 1989, a new state law does not apply.

"They had to let him go because of that loophole," said Wilson.

What was her reaction?

"I was disappointed, angry," she said. "More disappointed than anything."

Oneida County Sheriff Jeffrey Hoffman wrote letters to Gov. Jim Doyle and state and federal lawmakers, urging them to plug this hole in the law.

"I know that over the years, the statutes involving child sexual assault have been changed to give the victims time to acknowledge their abuse and report it," wrote Hoffman. "It appears that these changes have left out several generations of victims.

"It took a lot for this victim to come forward, and we had to tell her that though her brother confessed to these crimes, the extension of the statute of limitation does not apply to her because these events occurred before 1989."

He concludes, "We have come so far in how we deal with victims of sexual abuse that I was shocked that there was such a hole in our laws.

"We can only hope that the suspect in this case has not victimized or does not victimize any of the children at the school where he has worked for over 20 years."

Wilson agrees with all that. Her brother quit his job at the school and now works at an industrial plant.

"I'd like to see him in prison," she said. "I would know that he would remember every day why he's there. I don't know how else I could make him never forget what he did."

At this point, the law doesn't even allow her to file a civil lawsuit against him.

A new bill in the Wisconsin Legislature would let her and others like her file civil suits against their abusers.

Wilson said if that law is passed, she will sue.

"I'm not looking for a sum of money," Wilson said. Instead, she would like Brostowitz to be ordered to make payments, monthly payments, to an abuse shelter.

That way, she said, he would be reminded regularly of what he did to his sisters.

"I've had to live with it for how many years," she said, "and he just walks free with his head up."

Wilson works in the River Falls Journal's Classifieds Call Center.

Contact Judy Wiff at regional@rivertowns.net or 426-1049.

Bill would give victims more time to report abuse

A bill recently introduced in the Wisconsin Legislature would remove the time limit for filing civil lawsuits for injury resulting from sexual assault of a child.

While the new law would apply mainly to future victims, it would also give victims of earlier abuse a three-year window to file a civil suit.

"We've been very pleased with the support. It's a bipartisan effort," said Bill Berndt, River Falls. Berndt, a former state senator, is the Wisconsin representative and lobbyist for the National Association to Prevent Sexual Abuse of Children.

While the bill seeks to offer justice to victims of earlier abuse, other states have found the legislation reveals, and helps prevent, ongoing abuse, said Berndt.

"Most compelling is when California did it (revised its law), 300 current perpetrators were exposed," he said.

"There is no 'statute of limitations' on the pain and suffering child molesters cause victims," says a NAPSAC brochure. "Victims suffer a lifetime with issues of depression, anxiety, alcoholism, drug addictions, intimacy issues, authority issues, eating disorders and other debilitating problems directly attributed to being sexually abused."

According to a Legislative Reference Bureau analysis, under current Wisconsin law, a person has until he or she reaches the age of 35 to bring an action "for an injury resulting from being sexually assaulted or subject to incest as a child, or from being subject to sexual contact by a member of the clergy as a child..."

This bill, introduced as 2007 Senate Bill 356, would remove the time limit for filing those cases. It would also allow an injured party, whose action is barred by the current statute of limitations, to bring an action for injury within three years of the effective date of the bill.

Primary sponsors for the bill are Sen. Julie Lassa, D-Stevens Point, and Rep. Scott Suder, R-Abbotsford.

—Judy Wiff